

(3) *Exception for transit.* If pelagic longline gear is appropriately stowed, a vessel may transit through the CHSRA without meeting the observer and research requirements specified in § 229.36(d)(1) and § 229.36(d)(2). For the purpose of this paragraph, transit means non-stop progression through the area. Pelagic longline gear is appropriately stowed if all gangions, hooks, and buoys are disconnected from the mainline; hooks are not baited; longline left on the drum is covered with a tarp; and all other gear components are either stowed below deck or secured on deck and covered with a tarp.

(e) *Gear restrictions.* No person may deploy a pelagic longline that exceeds 20 nautical miles (nm) (37.04 km) in length in the Mid-Atlantic Bight, including in the CHSRA, unless they have a written letter of authorization from the Director, NMFS Southeast Fishery Science Center to use a pelagic longline exceeding 20 nm (37.04 km) in the CHSRA in support research for reducing bycatch of marine mammals in the pelagic longline fishery.

[74 FR 23358, May 19, 2009]

§ 229.37 False Killer Whale Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the False Killer Whale Take Reduction Plan to reduce mortality and serious injury of the Hawaii Pelagic and Hawaii Insular stocks of false killer whales in the Hawaii-based deep-set and shallow-set pelagic longline fisheries. The requirements in this section apply to vessel owners and operators, and vessels registered for use with Hawaii longline limited access permits issued under § 665.801(b) of this title.

(b) *Definitions.* In addition to the definitions contained in § 229.2, terms in this section have the following meanings:

(1) *Deep-set or Deep-setting* has the same meaning as the definition at § 665.800 of this title.

(2) *Longline gear* has the same meaning as the definition at § 665.800 of this title.

(c) *Gear requirements.* (1) While deep-setting, the owner and operator of a vessel registered for use under a Hawaii

longline limited access permit must use only hooks meeting the following specifications:

(i) Circle hook with hook shank containing round wire that can be measured with a caliper or other appropriate gauge, with a wire diameter not to exceed 4.5 mm (0.177 in); and

(ii) Offset not to exceed 10 degrees.

(2) While deep-setting, owners and operators of vessels registered for use under a valid Hawaii longline limited access permit must use leaders and branch lines that all have a diameter of 2.0 mm or larger if the leaders and branch lines are made of monofilament nylon. If any other material is used for a leader or branch line, that material must have a breaking strength of at least 400 lb (181 kg).

(d) *Prohibited area management.* (1) Main Hawaiian Islands Longline Fishing Prohibited Area. Longline fishing is prohibited in the portion of the EEZ around Hawaii bounded by straight lines connecting the following coordinated in the order listed:

Point	N. lat.	W. long.
A	18°05'	155°40'
B	18°20'	156°25'
C	20°00'	157°30'
D	20°40'	161°40'
E	21°40'	161°55'
F	23°00'	161°30'
G	23°05'	159°30'
H	22°55'	157°30'
I	21°30'	155°30'
J	19°50'	153°50'
K	19°00'	154°05'
A	18°05'	155°40'

(2) Southern Exclusion Zone. Deep-set longline fishing is prohibited in the Southern Exclusion Zone when the zone is closed to protect false killer whales pursuant to the procedures outlined in paragraph (e) of this section. The Southern Exclusion Zone is the portion of the EEZ around Hawaii bounded by 165° 00' W. longitude on the west, 154° 30' W. longitude on the east, the Papahānaumokuākea Marine National Monument and the Main Hawaiian Islands Longline Fishing Prohibited Area on the north, and the EEZ boundary on the south.

(e) *Southern Exclusion Zone trigger and procedures.* (1) The Assistant Administrator will publish in the FEDERAL REGISTER the expected observer coverage for a fishing year, the potential

biological removal level for the Hawaii Pelagic stock of false killer whales, and the associated trigger calculated using the specifications in paragraph (e)(2) of this section. This trigger will remain in effect until superseded by publication of a revised trigger.

(2) As used in this section, *trigger* means the number of observed false killer whale mortalities or serious injuries in the deep-set longline fishery that occur in the EEZ around Hawaii, and that serves as the bycatch threshold for closing the Southern Exclusion Zone to deep-set longline fishing. The trigger is calculated as the larger of these two values:

- (i) Two; or
- (ii) The smallest number of observed false killer whale mortalities or serious injuries that, when extrapolated based on the percentage observer coverage in the deep-set longline fishery for that year, exceeds the Hawaii Pelagic false killer whale stock's potential biological removal level.

(3) Unless otherwise subject to paragraph (e)(4) of this section, if there is an observed false killer whale mortality or serious injury in the EEZ around Hawaii on a declared deep-set longline trip that meets the established trigger for a given fishing year, the Southern Exclusion Zone will be closed to deep-set longline fishing until the end of that fishing year.

(4) If during the same calendar year following closure of the Southern Exclusion Zone in accordance with paragraph (e)(3) of this section, there is one observed false killer whale mortality or serious injury on a declared deep-set longline trip anywhere in the EEZ around Hawaii, then NMFS shall immediately convene the False Killer Whale Take Reduction Team.

(5) If in the subsequent calendar year following closure of the Southern Exclusion Zone in accordance with paragraph (e)(3) of this section, there is an observed false killer whale mortality or serious injury in the EEZ around Hawaii on a declared deep-set longline trip that meets the established trigger for a given fishing year, the Southern Exclusion Zone will be closed to deep-set longline fishing until the area is reopened by the Assistant Administrator

as per criteria in paragraph (e)(7) of this section.

(6) Upon determining that closing the Southern Exclusion Zone is warranted pursuant to the procedures in paragraphs (e)(1) through (e)(5) of this section, the Assistant Administrator will provide notice to Hawaii longline permit holders and the False Killer Whale Take Reduction Team, publish a notice in the FEDERAL REGISTER, and post information on the NMFS Pacific Islands Regional Office web site. The notice will announce that the fishery will be closed beginning at a specified date, which is not earlier than 7 days and not later than 15 days, after the date of filing the closure notice for public inspection at the Office of the Federal Register.

(7) *Reopening criteria.* If the Southern Exclusion Zone is closed pursuant to the procedure in paragraphs (e)(1) through (e)(6) of this section, the Assistant Administrator would reopen the Southern Exclusion Zone if one or more of the follow criteria were met:

(i) The Assistant Administrator determines, upon consideration of the False Killer Whale Take Reduction Team's recommendations and evaluation of all relevant circumstances, that reopening of the Southern Exclusion Zone is warranted;

(ii) In the 2-year period immediately following the date of the Southern Exclusion Zone closure, the deep-set longline fishery has zero observed false killer whale incidental mortalities and serious injuries within the remaining open areas of the EEZ around Hawaii;

(iii) In the 2-year period immediately following the date of the closure, the deep-set longline fishery has reduced its total rate of false killer whale incidental mortality and serious injury (including the EEZ around Hawaii, the high seas, and the EEZ around Johnston Atoll (but not Palmyra Atoll) by an amount equal to or greater than the rate that would be required to reduce false killer whale incidental mortality and serious injury within the EEZ around Hawaii to below the Hawaii Pelagic false killer whale stock's potential biological removal level; or

(iv) The average estimated level of false killer whale incidental mortality and serious injury in the deep-set

longline fishery within the remaining open areas of the EEZ around Hawaii for up to the 5 most recent years is below the potential biological removal level for the Hawaii Pelagic stock of false killer whales at that time.

(8) Upon determining that reopening the Southern Exclusion Zone is warranted pursuant to the procedures in paragraph (e)(7) of this section, the Assistant Administrator will provide notice to Hawaii longline permit holders and the False Killer Whale Take Reduction Team, publish a notice in the FEDERAL REGISTER, and post information on the NMFS Pacific Islands Regional Office web site. The notice will announce that the fishery will be reopened beginning at a specified date, which is not earlier than 7 days and not later than 15 days, after the date of filing the closure notice for public inspection at the Office of the Federal Register.

(f) *Marine mammal handling and release.* (1) Each year, both the owner and the operator of a vessel registered for

use with a longline permit issued under § 665.801 of this title must attend and be certified for completion of a workshop conducted by NMFS on interaction mitigation techniques for sea turtles, seabirds, and marine mammals, as required under § 665.814 of this title.

(2) Longline vessel operators (captains) must supervise and be in visual and/or verbal contact with the crew during any handling or release of marine mammals.

(3) A NMFS-approved placard setting forth marine mammal handling and/or release procedures must be posted on the longline vessel in a conspicuous place that is regularly accessible and visible to the crew.

(4) A NMFS-approved placard instructing vessel crew to notify the captain in the event of a marine mammal interaction must be posted on the longline vessel in a conspicuous place that is regularly accessible and visible to the crew.

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